

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

PAUL MITCHELL.

Petitioner,

VS.

BRIAN DUFFY, Warden.

## Respondent.

Case No: C 11-2705 SBA (PR)

**ORDER DIRECTING PETITIONER  
TO FILE AN AMENDED PETITION;  
AND DENYING MOTION FOR  
APPOINTMENT OF COUNSEL**

Petitioner, a state prisoner, previously filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On February 19, 2013, the Court issued an Order granting Petitioner's request for a stay of proceedings while he returned to state court to exhaust his state judicial remedies. The Court Order stated: "Nothing further will take place in this action until Petitioner receives a final decision from the highest state court and, within thirty (30) days of doing so, moves to reopen the action, lift the Court's stay and amend the stayed petition to add the newly exhausted claim." Dkt. 48 at 4.

On July 18, 2014, Petitioner informed the Court that his state proceedings had concluded; however, he did not amend the stayed petition to add the newly-exhausted claims. Therefore, Petitioner must file an amended petition in this Court which incorporates the newly-exhausted claims he intends to raise in federal court, as directed below.

Also before the Court is Petitioner's motion for appointment of counsel. Dkt. 64. The Sixth Amendment right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the

1 court determines that the interests of justice so require" and such person is financially unable  
2 to obtain representation. The decision to appoint counsel is within the discretion of the  
3 district court. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d  
4 at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984).

5 The appointment of counsel is the exception rather than the rule, and is generally  
6 limited to: (1) capital cases; (2) cases that turn on substantial and complex procedural, legal or  
7 mixed legal and factual questions; (3) cases involving uneducated or mentally or physically  
8 impaired petitioners; (4) cases likely to require the assistance of experts either in framing or  
9 in trying the claims; (5) cases in which petitioner is in no position to investigate crucial facts;  
10 and (6) factually complex cases. See 1 J. Liebman & R. Hertz, Federal Habeas Corpus  
11 Practice and Procedure § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only  
12 when the circumstances of a particular case indicate that appointed counsel is necessary to  
13 prevent due process violations. See Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d  
14 778, 782 (9th Cir. 1965).

15 At this juncture, it is not apparent that the appointment of counsel is warranted on any  
16 of the grounds set forth above. Accordingly, the interests of justice do not require  
17 appointment of counsel, and Petitioner's motion is DENIED. This denial is without prejudice  
18 to the Court's sua sponte reconsideration should the Court find an evidentiary hearing  
19 necessary following consideration of the merits of Petitioner's claims.

## 20 CONCLUSION

21 For the reasons stated above,

22 IT IS HEREBY ORDERED THAT:

23 1. No later than **twenty-eight (28) days** of the date of this Order, Petitioner must  
24 file an amended petition in this Court which incorporates the newly-exhausted claims he  
25 intends to raise in federal court. The Court will lift the stay on the date that Petitioner files his  
26 amended petition. Petitioner must submit the amended petition on the attached blank habeas  
27 petition form, clearly label the petition as the "Amended Petition," and write in the case  
28 number for this action on the form – Case No. C 11-2705 SBA (PR). He should also attach to

1 his amended petition a copy of his petition to the California Supreme Court, if the document  
2 is available to him. If Petitioner fails to file an amended petition within the prescribed period,  
3 the Court will dismiss this action without prejudice for failure to prosecute.

4       2. Petitioner's motion for appointment of counsel is DENIED without prejudice.  
5 Dkt. 64.

6       3. The Clerk of the Court shall send Petitioner a blank § 2254 habeas petition  
7 form.

8       4. This Order terminates Docket no. 64.

10      IT IS SO ORDERED.

11 Dated: 11/12/14

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge